

MEMORANDUM OF LAW

DATE: August 5, 1993

TO: Councilmember George Stevens, Fourth District

FROM: City Attorney

SUBJECT: Use of the Councilmember's Name in Another
Councilmember's Campaign Literature

This is in response to your memorandum of July 19, 1993, to City Attorney John W. Witt. In that memorandum, you ask whether an incumbent Councilmember who is running for office may use another Councilmember's name in the incumbent's campaign literature without the other Councilmember's permission. Your question arises because of a campaign brochure in support of the reelection of Councilmember McCarty. The brochure states it was paid for by "The Friends of Judy McCarty."

I have studied the brochure and find your name is mentioned once in the following statement: "By next year, Valerie Stallings and George Stevens could be the longest-serving members of the City Council." You have not claimed that this is anyway defamatory to you or your reputation. The gravamen of your complaint is that the brochure mentions your name and you did not give permission to Councilmember McCarty or her campaign committee to do so.

A recently enacted California Elections Code provision makes a candidate or candidate's committee liable for defamatory material in campaign literature if it is wilfully and knowingly done. Elections Code section 12528, as amended in 1990. The term "defamatory" is defined as an "invasion of the interest in reputation." 5 Witkin, Summary of California Law, section 471 (9th ed. 1988). Defamation is a form of tort (a civil wrong) involving invasion of privacy. If the defamation is done in writing, it is called "libel;" if it is done orally, it is called "slander."

In the above facts, you have not claimed that the statement is defamatory and, in fact, the statement containing your name does not appear to be so. Therefore, Elections Code section 12528 does not apply.

There are other torts involving the invasion of a person's

privacy, one of which involves use of a person's name for commercial purposes without the person's permission. 5 Witkin, Summary of California Law, section 588 (9th ed. 1988). I found no reported case allowing this form of tort to be used to recover damages for use of a person's name in campaign literature without the person's permission.

I hope this memorandum answers your questions.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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